system, may treat the parties symmetrically and thus fairly.[3] Yet symmetry can exist (or not exist) in all types of electoral systems. Because most electoral systems in the United States are single-member districts that are winner-take-all, in practice they normally give a "bonus" of varying sizes (above proportionality) in seats to the party that wins a majority of the votes across a state. This common pattern does not violate the symmetry standard.[4] Nothing in the symmetry standard prevents States, either directly or because of the way in which districts happen to be drawn, from giving a greater percentage of seats to the victorious party than that party's total vote proportion. Indeed, in States where the plan is "fair" either because of bipartisan redistricting or a neutral districting commission, symmetry exists in complete harmony with the "bonus" given to the majority party due to the United States' single-member district system.

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[3] Electoral systems that mandate versions of proportional representation do not necessarily produce partisan symmetry. See Browning & King, *Democratic Representation*, 81 Am. Pol. Sci. Rev. at 1257 Fig. 2 (modeling bias in a proportional representation system). Many European nations that use proportional representation have electoral systems that show partisan bias. *See* King, *Electoral Responsiveness*, 15 Leg. Stud. Q. at 174 & Tbl. 3.

[4] Partisan bias is the deviation from partisan symmetry. A separate concept is "electoral responsiveness." Electoral responsiveness indicates how responsive changes in seat outcomes are to changes in voter preferences. Electoral responsiveness, also referred to as the "bonus" for the majority party, the "swing ratio," or the "degree of representation," measures how much the seat division between the parties change as the vote proportions change. A purely proportional system is one in which a one percent increase in the votes for a party leads to a one percent increase in seats for that party. In the United States, a one percent increase in votes for a party normally leads to a two to three percent increase in seats. Under the symmetry standard, there is nothing necessarily unfair about one party winning a greater proportion of seats than the other. An electoral system may have any degree of partisan bias, no matter what level of responsiveness happens to exist. See Browning & King, *Democratic Representation*, 81 Am. Pol. Sci. Rev. at 1254-58 & 1259 Fig. 3.

The guiding test of the symmetry standard is whether the map treats similarly-situated parties equally—whether both parties have the *opportunity* to capture the same amount of seats, if they receive a particular percentage of the statewide vote. That the Democratic Party may receive only 38% of the seats if it receives 45% of the Statewide vote matters only in comparison to how the Republican Party would fare if it receives 45% of the Statewide vote.

## II. WELL-ACCEPTED AND WIDELY USED METHODS EXIST FOR MEASURING THE PARTISAN BIAS OF PROPOSED LEGISLATIVE REDISTRICTING PLANS

A consensus exists about using the symmetry standard to evaluate partisan bias in electoral systems. But such a consensus does not answer the subsidiary question: how to measure symmetry itself in order to determine whether partisan bias exists. Over the more than thirty years that scholars have worked on defining fairness as partisan symmetry, they also have developed a sequence of closely related, and steadily improving, statistical methods that measure the degree of partisan bias in proposed legislative redistricting plans. These methods, outlined in the articles cited in Section I, rely on well-tested and well-accepted statistical procedures.

Statistical methods and computer software using the symmetry standard examine all relevant election-related data, and employ an approach to calculate the difference in seats that the two parties would receive at a given vote level.[5] Using well-accepted techniques, these models allow experts to measure the number of seats that a party would win at a

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[5] This brief provides a relatively non-technical introduction to the research methodology used in the field. The articles cited in the text, published in peer-refereed academic journals, describe the methodology more fully.

given vote level. And the methods can separate partisan bias from other factors. While the actual inputs may vary to some degree from approach to approach, most rely on details of the proposed redistricting plans, all recent election results, the presence of an incumbent in the district, and whether the race is contested. Gelman & King, *Unified Method*, 38 Am. J. Pol. Sci. at 523-25. Other factors may include party registration data, prior party control of the district, candidate quality, and demographic characteristics of the voting age population. *Id.* at 525-26.[6]

Experts can disagree about which set of input data is relevant for a given case, but the resulting measures of partisan bias normally will not differ to any significant degree.[7] Because social scientists studying partisan bias rely on the

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[6] Any number of programs, both commercial and free, can analyze the relevant data to measure partisan bias.

[7] The methodology of quantifying the amount of partisan bias in a particular plan of course is subject to the standards of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 573, 573-75 (1993), and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 149-52 (1999), as is any application of statistical methodology. While the standard methodology for measuring symmetry and partisan bias is well-established, peer-reviewed, and reliable, the question whether it meets *Daubert* is not a question that this Court needs to decide in order to adopt the symmetry standard. Rather, courts will apply the traditional criteria for admitting expert evidence and determine in each case (1) whether the experts are qualified; and (2) whether their particular methodology is reliable. Indeed, a similar process already exists in other voting rights contexts. Under *Thornburg v. Gingles*, 478 U.S. 30, 52-54 (1986), and its progeny, courts regularly use statistics to determine racial bloc voting and to decide whether a minority group can elect a candidate of its choice. In each instance, the court must make a judgment about the expert and the methodology. For a thorough discussion of the different statistical standards used to determine whether a plaintiff has met the *Gingles* test and their reliability, see *Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 995-1005 (D.S.D. 2004) (discussing the various standards and surveying cases that apply these standards).

symmetry standard as the baseline for attempting to calculate the degree of bias, any difference of opinion is limited in scope and concerns chiefly the methodology used to calculate the percentage of seats that a particular party would receive at a given vote level. In practice, these differences have been minor.

Models applying the symmetry standard are by their nature predictive, just as the legislators themselves are predicting the potential impact of the map on partisan representation. The symmetry standard and the resulting measures of partisan bias, however, do not require forecasts of a particular voting outcome. Rather, by examining all the relevant data and the potential seat divisions that would occur for particular vote divisions, it compares the potential scenarios and determines the partisan bias of a map, separating out other potentially confounding factors. Importantly, those drawing the map have access to the same data used to evaluate it, and no data is required other than what is in the public domain. The question is not whether a particular party *will* win; it is whether one party has stacked the deck to such a degree that the plan burdens the other party's "rights of fair and effective representation." *Vieth*, 541 U.S. at 312 (Kennedy, J., concurring in the judgment). *Cf.* Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* 209 (2005) (noting that in the 1858 Lincoln-Douglas Senatorial election, Lincoln lost even though he received a majority of votes cast because the State Legislature, which picked Senators at the time, was heavily gerrymandered for the Democrats).

## III. THE SYMMETRY STANDARD ALLOWS THIS COURT TO DECIDE BY POLITICALLY-NEUTRAL AND OBJECTIVE PRINCIPLES WHETHER A PARTICULAR PLAN IS OVERLY PARTISAN

The ability to quantify partisan bias in a redistricting plan, and to distinguish partisan bias from other factors, permits this Court to adopt a rule that prevents gerrymandering from inhibiting a political group's representational rights. *Amici* take no position on how this Court could best implement a test for unconstitutional partisan gerrymandering that is based on evaluating the level of partisan bias in a plan. Yet the symmetry standard and the methodology applying it are just as "clear, manageable, and politically neutral," *Vieth*, 541 U.S. at 307-08 (Kennedy, J., concurring in the judgment)—if not more so—than other standards used to evaluate districting plans. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 55-61, 74-77 (1986) (using statistics to determine the existence of racial bloc voting, a necessary part of any § 2 claim); *Shaw v. Reno*, 509 U.S. 630, 646-49 (1993) (explaining how to decide whether a racial gerrymander is unconstitutional and examining "appearance," among other factors); *Georgia v. Ashcroft*, 539 U.S. 461, 480 (2003) (discussing influence and coalitional districts and noting that "[t]he ability of minority voters to elect a candidate of their choice is important but often complex in practice to determine"). And this Court's jurisprudence in other voting rights contexts suggests three different possible approaches for using the symmetry standard to determine the existence of an unconstitutional partisan gerrymander.

*First*, this Court could announce a rule of allowing a State to engage in as little partisan bias as necessary to further other compelling interests. In the one-person, one-vote context, this Court has required zero deviation for Congressional districts, while still permitting the State to justify any dis-

crepancy in population with a showing of compelling need. *See, e.g., Karcher v. Daggett*, 462 U.S. 725, 740–41 (1983). Moreover, the State need only achieve complete population equality "as nearly as practicable." *Id.* at 730. So long as a State attempts in good faith to create equal districts, the plan passes constitutional muster. *Id.* at 730-31.

The symmetry standard allows this Court to announce a similar rule in the partisan gerrymandering context: States must make a good-faith effort to achieve as little partisan bias as possible. States could justify any deviation by pointing to a legitimate interest such as compactness, respecting municipal boundaries, or preserving the core of prior districts. *Cf. id.* at 740.

States can comply with the "as little as possible" rule quite simply. The sophistication of computer mapping technologies allows States to add "no partisan bias" to their criteria in creating a redistricting plan. *Cf. id.* at 733 (noting that in 1983, "[t]he rapid advances of computer technology and education during the last two decades make it relatively simple to draw contiguous districts of equal population and at the same time to further whatever secondary goals the State has"). Whenever a State redistricts, it is possible to measure the partisan bias in a plan using the symmetry standard. Likewise, States know the total population before redistricting, and because application of the one-person, one-vote standard is simple, relatively little litigation results. Just as in the one-person, one-vote context, if this Court sets a clear rule beforehand, the amount of litigation about the rule post-issuance would be relatively limited. Finally, a rule of "as little as possible" captures both the "subtle" and the "blatant" gerrymander, each of which burdens a group's representational rights. *Vieth*, 541 U.S. at 316 (Kennedy, J., concurring in the judgment).

*Second*, this Court could establish a rule that prevents partisan bias to the extent that it allows the manipulating

party to gain control of one or more legislative seats to which it otherwise would not win. In other words, the symmetry standard allows courts to propound a simple and politically-neutral rule—whether the proposed map is so partisan that, as compared to a politically neutral map, it would cause one party to lose a legislative seat. Through the use of experts, a plaintiff would have to prove that a map would cause a group to lose a seat. *Cf. Gingles*, 478 U.S. at 44-46 (imposing a test for justiciability under § 2 of the Voting Rights Act, 42 U.S.C. § 1973, that requires a showing that the minority population is "sufficiently large and compact to constitute a majority in a single-member district" so there exists a potential remedy plan with at least one more district in which minorities have a realistic opportunity to elect candidates of choice than is found in the challenged plan).

*Third*, this Court could allow partisan bias in districting so long as it does not rise above a certain percentage. The symmetry standard allows courts to calculate the percentage difference in seats that a party would receive at any given level of the vote. If the average percentage difference between the two parties is above a particular threshold (whether it be 3, 5, or 10%), the plan would be unconstitutional. For example, if the court set the standard at 10%, a plan would not be unconstitutional unless the Democratic Party would capture 55% of the seats with 50% of the vote whereas the Republican Party would capture only 45% of the seats with 50% of the vote. *Cf. Brown v. Thompson*, 462 U.S. 835 (1983) (above 10% population deviation is *prima facie* unconstitutional for state legislative districts); *id.* at 852 (outlining test for determining when a plan is unconstitutional).

This third approach allows courts to consider what level of partisan gerrymandering is unconstitutionally "egregious." *Vieth*, 541 U.S. at 316 (Kennedy, J., concurring in the judgment). Studies of past partisan gerrymanders have shown that many gerrymanders have a partisan bias of 1-3 percentage points. In egregious cases, the difference is

greater than 5 percentage points, and it is only in the very rare and extreme case that a gerrymander results in a difference of over 10 points. Andrew Gelman & Gary King, *Enhancing Democracy Through Legislative Redistricting*, 88 Am. Pol. Sci. Rev. 541, 546 Fig. 2 (1994) (showing 15 states over a twenty-year period where the partisan bias rarely exceeded 5 percentage points and never exceeded 10 percentage points); Gary King, *Representation through Legislative Redistricting: A Stochastic Model*, 33 Am. J. Pol. Sci. 787, 814 (1989) (noting that the effect of the partisan gerrymander passed by Connecticut in the early 1970s that was at issue in *Gaffney v. Cummings*, 412 U.S. 735 (1973), was 3 percentage points); Robert X. Browning & Gary King, *Seats, Votes, and Gerrymandering: Estimating Representation and Bias in State Legislative Redistricting*, 9 Law & Pol'y 305, 318 (1987) (examining the Indiana plan in the 1980s that was the subject of *Davis v. Bandemer* and concluding that the House plan had a bias of 6.2 percentage points while the Senate plan had a bias of 2.8 percentage points); King & Browning, *Democratic Representation*, 81 Am. Pol. Sci. Rev. at 1262 Fig. 5 (showing bias in all States, with the plurality showing little if any bias, the vast majority falling within 5 percentage points, a few between 5 and 10, and even fewer above 10); *id.* at 1269 (listing bias figures for all States and showing only one State with a bias of above 10 percentage points); Gary W. Cox & Jonathan N. Katz, *Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution* 57-59 (2002) (finding extreme cases of gerrymandering at as much as 8 percentage points).

A rule that tolerates a particular degree of partisan bias would recognize that this Court is willing to permit some amount of burden on the rights of political groups in exchange for limited court involvement in only the most extreme of cases. As experience has shown, and as this Court has recognized, savvy legislators will take advantage of all the leeway that this Court will allow. *Cf. Karcher*, 462 at 731

("If state legislators knew that a certain *de minimis* level of population differences were acceptable, they would doubtless strive to achieve that level rather than equality."). Yet even a rule that policed only extreme cases would curtail some abuses. *Cf.* Gelman & King, *Enhancing Democracy*, 88 Am. Pol. Sci. Rev. at 541 (noting that while a redistricting plan may increase partisan bias in a particular instance, regular redistricting every ten years leads to less partisan bias than no redistricting at all over a period of decades).

Regardless of any rule that this Court adopts—especially if it is no rule—redistricting always will be political to some degree. Yet not all political consequences lead to an unconstitutional burden on the minority party. Any rule limiting partisan gerrymandering still preserves some political component to redistricting. Decisions of where to draw the lines and what communities to include inevitably have some political fallout. The symmetry standard does not necessarily affect the decision of where to place politically-sensitive land. *Cf. Vieth*, 541 U.S. at 358 (Breyer, J., dissenting). Moreover, the majority party may well decide to give the party that wins a majority of the vote (say 51%) an even-greater majority of seats (say 60%). Such a plan favors the majority party, but would not be unconstitutional under any approach so long as the minority party could win the same 60% of seats if it receives 51% of the vote.

And if this Court adopts any rule based on the symmetry standard, lower courts and this Court will flesh out the particulars of the rule in the future. Indeed, in the one-person, one-vote context, once this Court determined the general standards in *Reynolds v. Sims*, 377 U.S. at 377, and *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964), subsequent cases simply became legal arguments about exactly what level of population deviation was unconstitutional in given circumstances. *See, e.g., Kirkpatrick v. Preisler*, 394 U.S. 526 (1969); *Mahan v. Howell*, 410 U.S. 315 (1973); *White v. Weiser*, 412 U.S.

783 (1973); *Gaffney v. Cummings*, 412 U.S. 735 (1973); *White v. Regester*, 412 U.S. 755 (1973); *Connor v. Finch*, 431 U.S. 407 (1977); *Brown v. Thompson*, 462 U.S. at 835; *Karcher v. Daggett*, 462 U.S. at 725; *Larios v. Cox*, 300 F.Supp. 2d 1320 (N.D. Ga. 2004) (three-judge panel) (per curiam), *aff'd*, 542 U.S. 947 (2004). Similarly, this Court could set a general rule prohibiting partisan gerrymanders, and let courts decide the specifics of the issue as facts develop in the future. *Cf. Vieth*, 541 U.S. at 312 (Kennedy, J., concurring in the judgment) (suggesting that no manageable standard developed after *Davis v. Bandemer* because lower courts could do nothing except follow that decision); *id.* at 344-45 (Souter, J., dissenting) (same).

The signatories of this brief take no position on whether the particular Texas plan in this case is unconstitutional. None has independently examined the partisan bias in the current Texas map. The symmetry standard has achieved consensus within the social science community as a measure of bias because it is a politically-neutral measure that does not require examining proxies such as shape of the district, compactness, or traditional political boundaries. Instead, it evaluates the bias directly by comparing whether the plan treats similarly-situated parties similarly. Regardless of the merits of this particular lawsuit, the symmetry standard is "a suitable standard[] with which to measure the burden a gerrymander imposes on representational rights." *Vieth*, 541 U.S. at 313 (Kennedy, J., concurring in the judgment).

## CONCLUSION

In deciding this case, this Court should take into consideration the symmetry standard, as it measures partisan bias itself and it allows courts to decide in a politically-neutral and objective manner whether the State's plan is fair to all political groups.

Respectfully Submitted,

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IN THE

# Supreme Court of the United States

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,
*Appellants*,

*v.*

RICK PERRY, *et al.*, *Appellees*.

---

TRAVIS COUNTY, TEXAS, *et al.*, *Appellants*,

*v.*

RICK PERRY, *et al.*, *Appellees*.

---

EDDIE JACKSON, *et al.*, *Appellants*,

*v.*

RICK PERRY, *et al.*, *Appellees*.

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS**

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## BRIEF FOR AMICI CURIAE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES AND LEAGUE OF WOMEN VOTERS OF TEXAS IN SUPPORT OF REVERSAL

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## QUESTION PRESENTED

Whether claims that a state legislature lacked any nonpartisan basis for a threshold decision to engage in redistricting are justiciable and state a constitutional violation.

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## INTEREST OF AMICI[1]

This brief is submitted on behalf of the League of Women Voters of the United States and the League of Women Voters of Texas (collectively, "the League"). The League of Women Voters of the United States is a nonpartisan, community-based political organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, it is organized in more than 850 communities and in every State, with more than 150,000 members and supporters nationwide. The League of Women Voters of Texas, with 3000 members grouped into 32 local organizations, is affiliated with, but separately incorporated from, the League of Women Voters of the United States. It actively opposed the districting plan at issue in this case.

One of the League's primary goals is to promote an open governmental system that is representative, accountable, and responsive, and that assures opportunities for effective voter participation in government decisionmaking. To that end, the League espouses four basic principles for protecting the integrity of the electoral process. First, the bedrock "one person, one vote" guarantee of *Reynolds* v. *Sims*, 377 U.S. 533 (1964), should encompass not only mathematical proportionality in congressional districts, but also the right to an effective vote and responsive representation. Second, the redistricting process should promote full political participation by minority voters. Third, the redistricting process should be transparent and open to public participation.

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[1] In compliance with Rule 37.6 of this Court, amici curiae state that no counsel for any party authored this brief in whole or in part and that no person or entity, other than these amici curiae, their members or their counsel, made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief are on file with the Clerk.

Finally, and most relevant to this case, partisan gerrymandering subverts the democratic system because it allows *politicians* to choose their *voters*, rather than vice versa, and thereby compromises the incentives of those politicians to respond to the preferences of their constituents.

## SUMMARY OF ARGUMENT

The constitutional design requires the House of Representatives to represent the views of the people as closely as possible. State legislatures thwart that purpose when they gerrymander congressional districts for nakedly partisan advantage, concentrating the minority party's voters in as few districts as possible while ensuring margins sufficient to guarantee the election of the majority party's candidates in the other districts. Such gerrymanders produce districts in which the only seriously contested elections are party primaries, which tend to favor the politicians most committed to the party's national agenda rather than the views of the district's voters as a whole. Recent studies confirm that such gerrymanders, while rewarding party activists, undermine the responsiveness of Congress to the body politic. And such gerrymanders present special concerns when they occur not just after each decennial census, but, as here, in the middle of the decade as well, enabling partisans to fine-tune district boundaries to their advantage in advance of each congressional election.

In *Vieth* v. *Jubelirer*, 541 U.S. 267 (2004), all nine Justices appeared to agree that excessive partisanship in redistricting threatens democratic principles and violates the Constitution. They disagreed about whether, under the political question doctrine, courts could enforce that constitutional prohibition with judicially manageable rules. This case presents a textbook example of the availability of such rules.

For justiciability purposes, the Court should distinguish between two categories of excessive-partisanship challenges to state redistricting decisions. The first category consists of challenges, like this one, to a State's threshold decision to

engage in any redistricting in the first place. The second category consists of challenges, like that in *Vieth*, to the details of whatever lines a State ultimately draws. The justiciability concerns the plurality expressed in *Vieth* arose in connection with the multifaceted inquiry a court must conduct when presented with a challenge to a State's choice of one among thousands of possible district plans. Those concerns are far less substantial where, as here, the challengers claim simply that the State has demonstrated no plausible neutral basis for its threshold decision to redraw any district lines at all. Such claims are plainly justiciable.

They likewise state a clear constitutional violation. Under any level of equal protection scrutiny, the government must justify any action it takes by reference to *some* legitimate state interest. Promoting the interests of one political association at the expense of another—while a perfectly legitimate goal for a political party—is not a legitimate *state* interest.

Of course, the presence of a partisan objective would not necessarily invalidate a state redistricting decision if, in the absence of that objective, the State would have engaged in redistricting anyway for non-pretextual neutral reasons. But a partisan objective cannot itself justify such a decision. Here, appellants claim, quite plausibly, that the State acted for no purpose beyond advancing one party to the detriment of the other and would not have redrawn the existing district lines but for that partisan purpose. For our political system to function properly, the Judiciary not only can, but must resolve such claims on the merits, and should grant relief when the facts support the challengers. The courts are the only institutions that can be realistically expected to protect the political system from partisan gerrymanders.

## ARGUMENT

As discussed in Part I below, excessive partisanship in redistricting decisions thwarts basic democratic principles, a concern expressed by all nine Justices in *Vieth* v. *Jubelirer*, 541 U.S. 267 (2004). A key question in this case is whether

the courts can devise judicially discernible and manageable standards for protecting the redistricting process from excesses of partisanship. The answer to that question, as discussed in Part II, is yes—particularly in cases that, like this one, present a simple challenge to a State's threshold, yes-or-no decision to engage in *any redistricting at all*.

## I. EXCESSIVE PARTISANSHIP IN REDISTRICTING DECISIONS UNDERMINES EFFECTIVE REPRESENTATION

By constitutional design, the United States House of Representatives "is so constituted as to support in [its] members an habitual recollection of their dependence on the people." Federalist No. 57. House members are directly elected (unlike presidents); they serve two-year terms (unlike senators); and, in all but the smallest seven States, they represent only portions of their home States. Members of that body therefore have a unique capability—and responsibility—to advocate policies supported by their constituents. *See id.*; *see also Reynolds* v. *Sims*, 377 U.S. 533, 565 (1964).

The manner in which a State reapportions congressional districts is critical to ensuring the responsiveness of that State's House delegation. As this Court has explained, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live .... Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Wesberry* v. *Sanders*, 376 U.S. 1, 17-18 (1964). To ensure that the electoral process promotes that right, the "basic aim" of any districting plan must be the "fair and effective representation of all citizens." *Reynolds*, 377 U.S. at 565-566; *see also Davis* v. *Bandemer*, 478 U.S. 109, 125-126 n.9 (1986).

To that end, the States may legitimately follow many criteria in establishing congressional districts. One important goal in redistricting is the preservation of identifiable communities of interest. *See, e.g., Shaw* v. *Reno*, 509 U.S. 630, 646 (1993). Other important goals recognized by this

Court include "compactness, contiguity, and respect for political subdivisions." *See id.* at 647. But one characteristic of any "fair and effective" redistricting objective, *Reynolds*, 377 U.S. at 565-566, is a bedrock of political neutrality. While any redistricting policy is bound to have at least some effect on electoral outcomes, there is a stark difference in kind between, on the one hand, relying on neutral considerations that incidentally affect partisan outcomes and, on the other, adopting exclusively partisan criteria for which specific partisan outcomes are the *goal*.

Districts based on legitimately nonpartisan concerns are more likely to elect responsive members of Congress simply because elections in such districts tend to be more competitive. Politically gerrymandered districts are designed to cram members of the minority party into a small number of districts to dilute their votes and, in all other districts, to assure margins large enough to ensure victory for the candidates of the majority party. New software has made it easy to draw district lines that maximize political power for the favored party and minimize it for the disfavored party. *See, e.g., Vieth*, 541 U.S. at 312 (Kennedy, J., concurring in the judgment). The most contested election in such a district is typically a party primary, which favors the candidate that appeals most to the base of his or her party. The result is a highly polarized Congress composed of partisans bound to promote national party agendas rather than the interests of their diverse constituents. *See* Jason M. Roberts & Steven S. Smith, *Procedural Contexts, Party Strategy, and Conditional Party Voting in the U.S. House of Representatives, 1971-2000*, 47 Am. J. Pol. Sci. 305 (2003) (discussing explanations for increased polarization in Congress, including changes in electoral conditions, party strategies, and policy agendas); *cf. Shaw*, 509 U.S. at 648 (Elected officials in districts drawn for racial reasons "are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy.").

In short, partisan gerrymandering, like racial gerrymandering, "weaken[s] the link between popular opinion and electoral results" and thereby "contributes to the popular perception that elections do not matter, to the insulation of incumbents from political accountability, and to increased partisanship and extremism in legislative bodies." Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 Harv. J.L. & Pub. Pol'y 103, 112 (2000).[2] This is not a matter of mere speculation. Empirical studies confirm that, as partisan gerrymandering has become more sophisticated and effective, members of Congress have become measurably less responsive to changes in their districts' ideological composition. *See* Stephen Ansolabehere et al., *Old Voters, New Voters, and the Personal Vote: Using Redistricting to Measure the Incumbency Advantage*, 44 Am. J. Pol. Sci. 17, 31 (2000). It is also revealing that, precisely as the architects of political gerrymanders

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[2] *See also Vieth*, 541 U.S. at 316-317 (Kennedy, J., concurring in the judgment) ("The ordered working of our Republic, and of the democratic process, depends on a sense of decorum and restraint in all branches of government, and in the citizenry itself. Here, one has the sense that legislative restraint was abandoned. That should not be thought to serve the interests of our political order. Nor should it be thought to serve our interest in demonstrating to the world how democracy works. Whether spoken with concern or pride, it is unfortunate that our legislators have reached the point of declaring that, when it comes to apportionment, 'We are in the business of rigging elections.'" (quoting state senator)); *id.* at 330 (Stevens, J., dissenting) ("Gerrymanders subvert th[e] representative norm [of responsiveness] because the winner of an election in a gerrymandered district inevitably will infer that her success is primarily attributable to the architect of the district rather than to a constituency defined by neutral principles."); *id.* at 343-344 (Souter, J., joined by Ginsburg, J., dissenting) (describing fairness principle implicit in redistricting as "each political group in a State having the same chance to elect representatives of its choice as any other political group" and noting that "[i]t is undeniable that political sophisticates understand such fairness and how to go about destroying it" in redistricting (quotation omitted)); *id.* at 361 (Breyer, J., dissenting) ("Where unjustified entrenchment takes place, voters find it far more difficult to remove those responsible for a government they do not want; and the[] democratic values [of responsiveness to the popular will] are dishonored.").